UNITED STATES
v.
SHARREL PEARSON

IBLA 95-703 Decided May 19, 1999

Appeal of a decision by Administrative Law Judge Harvey C. Sweitzer approving an application to purchase a headquarters site. AA-58756.

Affirmed.

1. Alaska: Headquarters Sites

The statutory life of a headquarters site claim is 5 years from the date the notice of location of the claim is filed. In order to meet the headquarters site law requirements, all the requirements of use must be accomplished by the time the statutory life of the claim expires.

2. Alaska: Headquarters Sites

A headquarters site applicant has the burden of establishing entitlement to the land by showing compliance with the law. 43 U.S.C. § 687a (1970). An administrative law judge's decision finding that the totality of the facts and circumstances revealed that the applicant demonstrated a good faith, bona fide commercial enterprise from which she reasonably hoped to derive a profit will not be disturbed if it is supported by substantial evidence.

APPEARANCES: Sharrel A. Pearson, Tok, Alaska, pro se; Joseph D. Darnell, Esq., Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

The Bureau of Land Management (BLM), Alaska State Office, has appealed from a decision of Administrative Law Judge Harvey C. Sweitzer dated August 11, 1995, which approved Pearson's application to purchase a headquarters site over contest filed by the Bureau of Land Management (BLM) on July 29, 1993. BLM's contest complaint sought to invalidate Pearson's headquarters site application, Serial No. AA-58756, situated

in the Chintina Recording District, Third Judicial District, Alaska, on grounds that Pearson could not show that she was engaged in a trade, business, or productive industry at the time she filed her application, and on grounds that her actual use of the 5-acre lot was "not primarily as a headquarters site in connection with trade, manufacture, or other productive industry." Judge Sweitzer issued the decision subsequent to a contest hearing in Tok, Alaska, held on May 23, 1995.

Pearson filed a notice of location on May 29, 1986, claiming an occupancy for an arts and crafts business from April 15, 1986. Later, Pearson filed an application to purchase the headquarters site, indicating that she had placed an 8-foot by 12-foot cabin on the property, at a cost of $2,000. On August 11, 1992, David Mushovic and Mike McGinty, BLM Realty Specialists, conducted a land examination to determine whether Pearson's site qualified as a headquarters site.

Mushovic identified the location of the site as in the "Suslositna Valley, approximately 3 miles east of the Tok cutoff (or the road that connects Tok with Glennallen) at the mile 71 or 72 marker." (Tr. 14.) To conduct the land examination, Mushovic "drove out to Tok cutoff to a small dirt road that travels down to native-conveyed lands, parked there, and crossed the Slana River by boat and then hiked in." Id. The hike to the Pearson site is about 3 miles. Id. Pearson was not at the location during Mushovic's examination. (Tr. 13-14.) The closest neighbor, Steve Myers, volunteered to show the specialists the location and answer questions. (Tr. 14.) At the site, Mushovic observed an 8-foot by 12-foot framed cabin. Inside were a lantern, a bed with sleeping bag, "a few miscellaneous books," a desk that had "approximately one desk drawer of materials of miscellaneous sequins and beads and a few almost-empty spools of thread." (Tr. 15.) According to Mushovic, Myers told him that, before they built the cabin, Pearson would "come out in the winter and set up a heated wall tent and work in that for short periods of time." (Tr. 16.) Mushovic completed a field report pertaining to the Pearson application, which became part of the record. (Tr. 17-18.)

Mushovic stated that his job was to determine whether Pearson's business appeared to be "an ongoing or potentially productive business." Her income, he said, was considered as well as the physical use and occupancy he observed which would tie the income to the location. (Tr. 25.) Based upon his observation, Mushovic explained, the cabin appeared to be "newly constructed, as the cabin structure and condition of some of the lumber was relatively fresh," and that there was "no significant disturbance of compaction or vegetation disturbance that would indicate an on-going usage over a period of time." (Tr. 15.)

Steve Myers and Joe Riley testified on Pearson's behalf. Myers stated that his cabin had been constructed on the adjoining site in 1984, and the trail going to his cabin has been in use since that time. He indicated that access to the area is much better in the winter, as the creek can be used to gain access via snowmobile (Tr. 29-30), and that

Pearson used the site mostly in the winter. He testified that, before he built the cabin, she would sled in her supplies. (Tr. 30.) Myers testified that he began construction on the cabin in the winter of 1990, and finished it in the spring of 1991. (Tr. 36.) According to Myers, there was no lock on the door, and Pearson did not leave valuable supplies at the cabin. He stated that, in his estimation, an extra $1,000 of income per year would "go a long way," as the needs of the lifestyle are simple, assuming one owns a snowmobile and a canoe. It would buy "all the gas in a generator, or all the propane for cooking." (Tr. 34.)

Joe Riley lives 3 miles east of Mile 72 on the Tok cutoff, and has a business that Pearson frequents "on * * * [her] way in and out." (Tr. 37.) He testified that he has bought Pearson's leatherwork from both Pearson "at her place of business" and Duffy's Roadhouse, which is a "restaurant and bar, service station and grocery * * *." (Tr. 38, 41.) He stated that Pearson lived on the site for a while, and then he would see her going in and out "numerous times, * * * no less than a dozen, winter and summer." She would stay 2 or 3 days at a time, usually on weekends. (Tr. 42.) Riley stated that he and Myers would stop by when Pearson was at the cabin, "working on her little beadwork and stuff, and the lantern going in the middle of the wintertime * * *." (Tr. 42.) Riley also testified that Pearson's income could be "a matter of food and heat to those of us that live out there." (Tr. 39.)

Pearson also submitted statements into the record from several of her buyers. Headquarters site neighbor Patty West bought Pearson's jewelry from both Pearson and from Duffy's Roadhouse. Patricia Rogers bought Pearson's hand-made bead jewelry in 1991 from the Husky Lounge. Margaret Scott sold Pearson's hand-made jewelry at her gift shop located at Mile 64 on the Tok Highway. Lorene Ellis, owner of the Nabesna Trading Post in Slana, has sold Pearson's beadwork since 1987 on moccasins, gun scabbards, and earrings to "out-of-state visitors." Thelma Schrank, Manager of Duffy's Roadhouse, located at Mile 63, stated that Pearson has displayed and sold her beaded jewelry at Duffy's since 1987, and, in her opinion, Pearson "has shown the ability to run a successful business of creating jewelry * * *." (Pearson Exs. B-F.)

Pearson submitted copies of business licenses and tax returns for 1989, 1990, and 1991 into the record. In 1988, Pearson's profit and loss statement reveals that she earned $193 from the sale of her jewelry, less expenses of $72.73, for a net profit of $120.27. In 1989, Pearson's jewelry receipts (listed under Sharrel's Variety Store) amounted to $150, but her expenses totaled $347.10, showing a net loss on her jewelry business of $197.10. That year Pearson recorded a taxable income of $16,302. In 1990, Pearson's profit or loss statement shows $522 in income from her jewelry business, less $66.40 in expenses and $25 for taxes and licenses, for a net profit of $430.10. Pearson's taxable income for 1990, however, was just $2842.30. For the 3 years in which she submitted records, Pearson's receipts totaled $865. Her total net profit for those years was $353.27; however, profits more than tripled from 1989 to 1991. Pearson stated that her profits increased as she learned to price her products. (Tr. 48.)

In his decision, Judge Sweitzer discussed the relative merits of each party's position by stating:

Mr. Mushovic concluded that Ms. Pearson did not use the headquarters site in a qualifying manner based upon, among other things, the alleged facts that her business activities were poorly documented, that he lacked personal knowledge of her business activities or use of the land, that she used the site only sporadically, that the cabin was completed after the 5-year prove-up period, and that neither the interior nor exterior of the cabin showed signs of substantial usage. (Ex. 3.) He noted a perceived lack of a stove and cooking utensils, well developed trails, firewood cuttings, and documents or materials stored at the site. (Ex. 3.) Finally, he believed her site-related income was not indicative of a productive industry. (Tr. 25-26.) Assuming, without deciding, that BLM established a prima facie case through Mr. Mushovic's testimony and field report and other evidence, Ms. Pearson nevertheless established her eligibility to purchase the headquarters site as more fully discussed below.

As previously mentioned, Ms. Pearson need show that she had an ongoing business at the time she filed her purchase application, that she utilized the headquarters site in connection with that business, and that she reasonably hoped to derive a profit from such use of the site. See [United States v.] Bush, 40 IBLA [106,] 113 [(1979)]. She made this showing, and, in the process, addressed many of the concerns expressed by Mr. Mushovic.

Ms. Pearson established that she had an ongoing business at the time she filed her purchase application in May of 1991. While Mr. Mushovic complained of allegedly poor documentation of this business, Ms. Pearson did produce business licenses for the years 1989, 1990, and 1991 and tax returns for the years 1988, 1989, and 1990 showing income earned from her sales of bead products for each of these years. She also presented testimony and written statements from others as to the existence and ongoing nature of her business. Mr. Mushovic's lack of personal knowledge of her business activities is not controlling in light of this evidence.

Ms. Pearson also showed that she used the headquarters site in connection with this ongoing business. She used the site more than sporadically, visiting it approximately one dozen times per year for a period of at least 2 or 3 days on each visit to manufacture her products. She also caused the cabin to be constructed there for use in her business. Through her own testimony and the testimony of Steve Myers, she showed that the cabin was completed in the spring of 1991, approximately at the end of her prove-up period. Mr. Myers explained that a trail to the site has existed since 1984 and that the signs of

> usage around the cabin may not be substantial because it was mostly used during the winter over snowpack. (Tr. 28-30.) No firewood was needed because all heating and cooking was done with propane. Mr. Mushovic conceded that some bead materials were stored at the cabin, and Ms. Pearson explained that she carried many materials, such as porcupine quills, with her. (Tr. 53.)
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> While her annual income was not large, it did increase rather dramatically to $522 in 1990, towards the end of her prove-up period, as she gained experience in pricing her wares (see Tr. 48). She also earned a profit in 1990, thus showing that she reasonably hoped to derive a profit from her usage of the site.

(August 11, 1995, Decision at 3-4.) Judge Sweitzer therefore concluded that "contestee's application to purchase the headquarters site should be approved and a patent should accordingly issue in due course." Id. at 4.

In its Statement of Reasons on appeal (SOR), BLM argues that Judge Sweitzer erred in his conclusion that Pearson had shown a "reasonable hope of deriving a profit." BLM maintains that Pearson produced no documentary evidence showing that, after 1990, she used the cabin in furtherance of a productive enterprise; she therefore failed to show that she was engaged in a productive enterprise at the time she filed her application to purchase as required by 43 C.F.R. § 2563.1-1(a). Moreover, BLM contends, Judge Sweitzer failed to take into account Pearson's $2,500 capital expenditure in the cabin when considering whether Pearson had shown that she was "engaged in a productive industry." BLM argues that "Ms. Pearson's limited activities, meager return compared to her investment, and cessation of activity prior to the conclusion of the prove-up period must lead to the conclusion that she did not have a bona fide commercial enterprise from which she reasonably expected to derive a profit." (SOR at 5-9.)

The Act of March 3, 1927, c. 323, 44 Stat. 1364, amended the original Trade and Manufacturing (T & M) Site Act of May 14, 1898, 43 U.S.C. § 687a (1988) (repealed effective October 21, 1986, subject to valid existing rights, by section 703(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-579, 90 Stat. 2790 (1976)), to allow persons engaged in a trade, manufacture, or other productive industry to purchase one claim, not exceeding 5 acres, as a homestead or headquarters site. See John C. Phariss, 134 IBLA 46, 47, 49 (1995). In its regulations on homesites and headquarters, the Department has rendered the following interpretation of the Act of March 3, 1927: "The purpose of this statute is to enable fishermen, trappers, traders, manufacturers, or others engaged in productive industry in Alaska to purchase small tracts of unreserved land in the State, not exceeding 5 acres, as homesteads or headquarters." 43 C.F.R. § 2563.0-2. See United States v. Henry J. Bush, supra at 108.

In Vernon L. Nash, 17 IBLA 332, 335 (1974), the Board stated as follows:

> The reason for the amendment was explained in a letter dated December 1, 1925, from the First Assistant Secretary of the Interior to the Board of Appeals of the Department, which reads in pertinent part as follows:
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> > The Department of Agriculture advises me that there are many individuals * * * who are located on public or national forest lands in Alaska, and who are either employed in canneries, sawmills and other corporate enterprises, or who are themselves engaged in the fishing, mining, or other industries as individuals. These people would like to be able to acquire patents to small tracts of land for their homes and headquarters * * *.

See also Solicitor's Opinion, M-36187 (November 12, 1953). The term "headquarters" appears to be given its usual meaning; in this instance, the principal site used in connection with a trade, manufacture, or other productive industry. However, there is no requirement that the trade or other occupation be carried on at the headquarters site. See John C. Phariss, supra.

[1] The application to purchase is required to be filed within 5 years after the applicant's filing of his notice of claim. 43 U.S.C. § 687a-1 (1970). The statutory life of a headquarters site claim is 5 years from the date the notice of location of the claim is filed, rather than from the date the application is filed, as BLM alleges. (SOR at 8, 9.) See 43 U.S.C. § 687a (1988); Thomas B. Craig, 134 IBLA 145 (1995). In order to meet the headquarters site law requirements, all the requirements of use must be accomplished by the time the statutory life of the claim expires. Laveta O. Schoephorster, 19 IBLA 90 (1975). Thus, Pearson must show that sometime after the filing of her location notice and before the expiration of the time required for filing an application to purchase, 1/ i.e., during the statutory life of her claim, she became engaged in some sort of productive industry. See Thomas B. Craig, supra at 150.

[2] In order to qualify for a headquarters site, an applicant must submit evidence from which it can be concluded that she was engaged in an actual business operation from which she reasonably hoped to derive a profit and that the land claimed was used in connection with that operation. The Board has stated that in order to establish a right to land

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1/ The copy of the application for purchase included as Exhibit 2 in the hearing transcript is not dated, nor is it date-stamped. In his field report, David Mushovic avers that this application was filed on May 7, 1991. (Ex. 3 at 2.)

under the public land laws, the applicant is required to support her assertions with evidence which is within her sole control. United States v. Beaird, 31 IBLA 203, 209 (1977), aff'd, Beaird v. Andrus, No. F-77-31 (D. Alaska June 19, 1979). An applicant must present evidence of a potentially productive industry such as customer trade or gross receipts. United States v. Ehmann, 50 IBLA 69, 72 (1980) (Burski, A.J., concurring).

A headquarters site application is properly rejected where the appellant fails to produce any probative evidence that the land claimed as a headquarters site was used in connection with a productive industry. Gustav O. Wiegner, 26 IBLA 123, 126 (1976). While it is not necessary for appellant to show that all functions of his business were carried on at the site, she must show a bona fide commercial enterprise from which she reasonably hopes to derive a profit. United States v. Jack Zemmy Boyd, Jr., 39 IBLA 321, 330 (1979), and cases cited. Revenues generated must not be infrequent or meager; receipt of a few dollars over a period of years will be insufficient to support a headquarters site. United States v. Beaird, supra; United States v. McLean, 50 IBLA 290, 300 (1980).

However, it is not necessary that a claimant demonstrate that she has established a profitable venture as of the completion of the 5-year statutory compliance period. Gustav O. Wiegner, supra. In Beaird, supra at 208, the Board found the reasoning in James E. Allen, A-30085 (February 23, 1965), a T & M site case, apposite, quoting: "We do not mean to imply that a modest operation or even an unprofitable one would necessarily fail to qualify under the [T & M] site law. That law does not require the existence of a full-blown enterprise before a patent can issue."

Thus, the evidence proffered must simply be sufficient to show that the claimant had a reasonable hope of deriving a profit from the business operation. United States v. Hodge, 111 IBLA 77, 86, 88 (1989) (T & M site); United States v. Bush, supra at 113.

BLM relies primarily on the Board's holdings in United States v. Beaird, supra, Lynn E. Erickson, 10 IBLA 11, 80 I.D. 215 (1973), and United States v. Jack Zemmy Boyd, Jr., supra, as the basis for its contention that Pearson's occupation of the site was not sufficiently connected with a productive enterprise from which she could reasonably hope to derive a profit, and, therefore, Judge Sweitzer's decision is in error and should be reversed.

In Beaird the Board reversed Administrative Law Judge Kendall Clarke's September 20, 1976, decision dismissing BLM's contest complaint against Beaird's headquarters site. The evidence revealed that, during the qualifying life of the site, which was located for a trapping business, the only quantified expression of revenue from applicant's trapping operation was a $100 wolf bounty. Although applicant had trapped 26 marlen, he was saving the skins to have a coat made for his wife. Though the site was located for trapping, the applicant claimed he ran a guide business from the site,

but could not produce evidence of earnings. In that case, the Board concluded: "The inference must be that appellee was engaged in the operation only for his personal pleasure and was not engaged in trade, manufacture, or other productive industry from which he hoped to garner a profit." United States v. Beaird, supra at 209.

Erickson involved a notice of location of a headquarters site filed on November 29, 1966, based upon Erickson's proposed use of the land for a commercial salmon operation, using both drift gill netting and shore set netting. He filed his application to purchase the site on September 28, 1970. The evidence in that case showed that Erickson's operation failed to materialize. The only sales were made in 1966. Erickson found no buyers in 1967, 1968, and lack of buyers forced sale of equipment by 1969; moreover, the 1966 venture which generated sales occurred some 190 miles from the headquarters site settlement. Id. at 12-14, 80 I.D. at 216-17.

Jack Zemmy Boyd filed a notice of location for both a T & M site and a headquarters site on November 20, 1968, and filed applications to purchase on November 20, 1973. The T & M site 2/ was to be developed into a dude ranch and camping resort business; the headquarters site was to be used for trapping and tanning of furs. Boyd lived and worked about 150 miles away from the sites. In summarizing the evidence before him, Administrative Law Judge Clarke, in his September 1978 decision, stated:

> The only evidence of income from the T & M site is that which was supplied by a certified public accountant that said in a written

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2/ Section 10 of the Act of May 14, 1898, as amended (the T & M Site Act), 43 U.S.C. § 687a (1988) (repealed by section 703(a) of FLPMA, Pub. L. No. 94-579, 90 Stat. 2789, effective Oct. 21, 1986, subject to valid existing claims), provides as follows:

"Any citizen of the United States or any association of such citizens or any corporation * * * in possession of and occupying public lands in Alaska in good faith for the purposes of trade, manufacture, or other productive industry, may each purchase one claim only not exceeding eighty acres of such land * * * upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry."

Under 43 C.F.R. § 2562.3(c), an application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim. Under 43 C.F.R. § 2562.3(d)(1), the application must show:

"(1) That the land is actually used and occupied for the purpose of trade, manufacture or other productive industry when it was first so occupied, the character and value of the improvements thereon and the nature of the trade, business or productive industry conducted thereon and that it embraces the applicant's improvements and is needed in the prosecution of the enterprise. A site for a prospective business cannot be acquired under section 10 of the [T & M Site Act]."

> statement * * * that he had examined the income tax returns for the contestee prior to 1975 and had found that Mr. Jack Z. Boyd reported $3,130 income from Jazebo Outdoor Recreation Business and $843 income from trapping and tanning of furs. Nowhere is there any evidence as to the expenses that were incurred in these income figures. Nor is there any indication with regard to the T & M site as to whether the income from Jazebo was derived from a rental business, not necessarily connected with the T & M site.

United States v. Jack Zemmy Boyd, Jr., supra at 326. With regard to the headquarters site, the judge ruled that "[t]he activity of trapping appears to more closely resemble a recreational activity rather than a business enterprise." Id. With regard to the T & M site, the judge determined it to be "clearly a future business prospect, and one which, therefore, does not qualify as under the law and regulations." Id. at 327 (emphasis supplied). The Board upheld Judge Clarke's decision in that case, finding:

> Appellant's improvements were minimal, consisting mostly of trails on both sites and small clearings for tents on the [T & M] site. The lapse of time between filing the applications and the land examination is not sufficient to explain the lack of evidence of use on land in Alaska where revegetation is slow. * * * While an entryman is not required to continue his business operations on a site after a purchase application is filed, his failure to do so may be viewed with all the evidence as going to his good faith in acquiring the sites for the purposes sought. Thus a minimal compliance before an application is filed would be viewed more favorably if the business activities increase thereafter than where they cease. There was very little to show any commercial activity on the [T & M] site. * * * Appellant's rental business, such as it was, was conducted from his home. While it is not necessary for appellant to show that all functions of his business were carried on at the site, he must show a bona fide commercial enterprise from which he reasonably hopes to derive a profit. * * * Appellant's proof did not support the statements in his applications. The applicant must show actual business use to support either a headquarters site or a [T & M] site. At most appellant has shown only preparation for a prospective business which has never materialized. This is not sufficient.

United States v. Jack Zemmy Boyd, Jr., supra at 330-31 (citations omitted).

BLM argues that our holding in Boyd necessitates a reversal of Judge Sweitzer's decision because Boyd clearly states that: (1) $843 of income is not sufficient to justify occupation of a headquarters site, (2) business licenses must be shown to be current to the year the application is filed, and (3) lack of a showing of income from the business at

the time the application to purchase is filed indicates that a claimant is not engaged in an ongoing concern. We cannot, however, square this reading of Boyd with many of our other decisions which affirm the language we quoted from Beaird and James E. Allen, supra: "We do not mean to imply that a modest operation or even an unprofitable one would necessarily fail to qualify under the [T & M] site law. That law does not require the existence of a full-blown enterprise before a patent can issue." Indeed, as Pearson argues, the "Headquarters Site Information Pamphlet" (Ex. G) published by BLM does not provide income guidelines in order to qualify for a headquarters site. (Tr. 50.) BLM has never enacted regulations so restricting the T & M Site Act.

From our review of the more than several cases addressing headquarters sites that have come before the Board, it is apparent that many applicants have brought little or no evidence of a "bona fide commercial enterprise" from which they "reasonably hope to derive a profit." In this case, Judge Sweitzer found that Pearson had established both elements. Our review of the record indicates that the evidence in this case is qualitatively different from that presented in many of the other cases. In this case, Pearson established that she was actively marketing her products and developing skills related to how to price the product. She had built a network of buyers who were interested in her jewelry. In 1990, the profit from her jewelry business, although small, amounted to about 15 percent of her taxable income. Her headquarters site is near local markets (Tr. 54), although she has not restricted herself to them, using summers to sell on the road. (Tr. 31.)

We do not find BLM's assertions in the SOR that "[t]here is no evidence Ms. Pearson was engaged in any business involving the headquarters site past 1990," (SOR at 8) to be accurate; nor do we find BLM's assertions in the SOR (at 7) regarding the cost of the cabin or the lack of business licenses to be consistent with the evidence. Pearson averred in her application to purchase that the cabin "cost $2000;" that evidence was not contradicted. Myers testified that he built the cabin with "three or four other people," in exchange for use of the cabin for his guests when Pearson was not using it. (Tr. 30.) Pearson testified that she had a business license for 1992, but she had failed to bring it with her to the hearing. (Tr. 54-55.) Judge Sweitzer found that she had business licenses from 1989 through 1991; this finding is supported by Exhibit 4. (Decision at 3.) Pearson produced statements from buyers indicating that the jewelry business was an ongoing concern. (Tr. 45.)

When Judge Sweitzer asked Pearson to speak on her own behalf, she stated, inter alia,

> I worked really hard on this bead thing. I have done a lot of - - sold a lot. It doesn't take much storage to keep beads or porcupine quills or even my leather that I use. As far as the amount being in my cabin, I will not leave my valuable ones there and I will not leave my leather there because of the shrews and stuff.

> I have gone out many, many times and I still do. I don't know what else to say. I gave it my all.

(Tr. 48.)

Judge Sweitzer found Pearson to be a sincere and credible witness. The Board will ordinarily not disturb a Judge's findings of credibility where they are supported by substantial evidence. United States v. Dierdre Higgins, 134 IBLA 307, 316 (1996); Bureau of Land Management v. Carlo, 133 IBLA 206 (1995). The Judge found that Pearson overcame the prima facie proof presented by the BLM realty specialist. We uphold Judge Sweitzer's finding that Pearson demonstrated that she had a productive enterprise during the statutory life of the claim. We find that the totality of the facts and circumstances demonstrated in the record supports Judge Sweitzer's decision that Pearson presented adequate evidence to show that she in good faith had a "reasonable hope" of establishing a "bona fide commercial enterprise" during the statutory life of her claim. We find Boyd to be inapposite because, unlike Pearson, the total factual context before the Judge in that case did not generate evidence of a "bona fide commercial enterprise."

Accordingly, pursuant to the authority granted to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

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James P. Terry
Administrative Judge

I concur:

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James L. Byrnes
Chief Administrative Judge